

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:) Art Unit:
)
FRESKGARD, et al.) Examiner:
)
Serial No.: 10/589,551) Washington, D.C.
)
Filed: August 16, 2006) September 4, 2008
)
For: METHOD FOR ENRICHMENT) Docket No.: FRESKGARD=10
 INVOLVING ELIMINATION BY)
 MISMATCH HYBRIDISATION) Confirmation No.: 8526

PETITION TO VACATE ERRONEOUS HOLDING OF ABANDONMENT

U.S. Patent and Trademark Office
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Randolph Building
401 Dulany Street
Alexandria, VA 22314

S i r :

Applicants petition the Commissioner to exercise supervisory authority under 37 CFR 1.181 and vacate the erroneous holding of abandonment set forth in the notice of abandonment mailed August 22, 2008. This is believed to be a "no-fee" petition, but if a petition fee is due, please charge it to deposit account 02-4035 and notify the undersigned.

1. On August 16, 2006, Applicants requested entry of this case into the national phase, and paid the basic national fee set by 37 CFR 1.492(a).

2. On April 16, 2007, applicants were mailed a Notification of Missing Requirements, which required, inter alia, the paper and CRF forms of the sequence listing, and the supporting statement.

3. On September 17, 2007, Applicants filed a response to the NMR. The response included, inter alia, a paper sequence listing (54 pp.), a CRF (3.5" disk), and a paper entitled "Response to 'Sequence Listing' Requirement". The latter directed the entry of the sequence listing, and made the statements required by 37 CFR 1.821 et seq.

4. Enclosed herewith as exhibit A is our receipt for the September 17, 2007 filing, stamped by OIPE. Note that the boxes

"Sequence Listing", for the paper copy, and "With Disk", for the CFR, are checked off.

5. Inspecting PAIR, we see that the PTO acknowledges receipt of the 54 pp. sequence listing and the statement that paper and CRF are the same.

6. The Notification of Abandonment states

Applicant has failed to properly respond to notification of missing requirements mailed 04/16/07, regarding sequence requirement. According to STIC, as of 08/07/08, a transfer request was filed on 09/17/07. No transfer request was found in application. No CRF has been file [sic].

7. The reference to a "transfer request" is not understood. While our form response has a place for requesting transfer of the CRF from a prior application, the appropriate box was not checked off. Rather, applicants stated that they "hereby submit... the Sequence Listing in computer readable form...."

8. Exhibit A constitutes clear and convincing evidence that the CRF was timely received by the PTO. Hence, the holding of abandonment should be vacated.

9. To expedite prosecution, we are e-filing herewith a replacement CRF (TXT file), to replace the CRF apparently lost by the PTO after it was filed.

The undersigned attorney or agent hereby states as follows:

- (a) this submission does not include new matter [§1.821(g)];
- (b) the contents of the paper copy (as amended, if applicable) and the computer readable form of the Sequence Listing, are the same [§1.821(f) and §1.825(b)];
- (c) if the paper copy has been amended, the amendment is supported by the specification and does not include new matter [§1.825(a)]; and
- (d) if the computer readable form submitted herewith is a substitute for a form found upon receipt by the PTO to be damaged or unreadable, that the substitute data is

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identical to that originally filed [§1.825(d)].

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.
Attorneys for Applicant

By:


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Enclosures

- Exhibits A and B
- CRF

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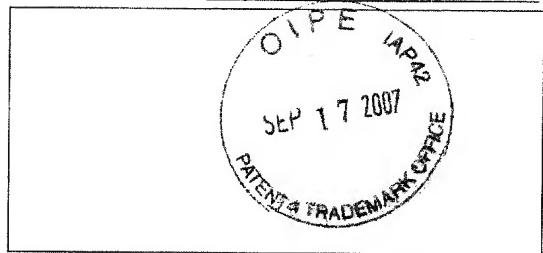
Exhibit A

APPLICATION/PATENT NO: 10/589,551
DOCKET NO: FRESH GARD = 10

THE PATENT AND TRADEMARK OFFICE STAMP
HEREON ACKNOWLEDGES RECEIPT OF THE
FOLLOWING PAPERS:

- FEES \$ 1355.00 PTO FORM 2038
 EXTENSION OF TIME (3 MONTHS)
 TRANSMITTAL LETTER
 MISSING PARTS RESPONSE WITH DECL
 AMENDMENT/RESPONSE (circle one)
 PRELIMINARY SUPPLEMENTAL
 APPLICATION DATA SHEET
 RESTRICTION/ELECTION REPLY
 SEQUENCE LISTING WITH DISK
 RCE TRANSMITTAL
 REQUEST FOR STATUS
 NOTICE OF APPEAL
 APPEAL BRIEF/REPLY BRIEF (TRIPPLICATE)
 REQUEST & CERTIFICATE OF CORRECTION
 OTHER _____

CONF. NO.: 8526
CLIENT CODE: H01B



- ASSIGNMENT
 INFORMATION DISCLOSURE STATEMENT
 FORM SB08A & _____ PATENTS/PUBS
 PRIORITY DOCUMENT(S) NO. _____
 DECLARATION UNDER § _____
 _____ SHEETS OF FORMAL DRAWINGS
 ISSUE FEE TRANSMITTAL FORM
 PUBLICATION FEE
 MAINTENANCE FEE LETTER

B&N-1

10/589,551 Method For Enrichment Involving Elimination By Mismatch Hybridisation 09-02-2008::12:44:42

This application is officially maintained in electronic form. To View: Click the desired Document Description. To Download and Print: Check the desired document(s) and click PDF.

Bibliographic Data

Mail Room Date	Document Code	Document Description	Document Category	Page Count
08-22-2008	ABN	Abandonment	PROSECUTION	1
09-17-2007	PEFR	Applicant Response to Pre-Exam Formalities Notice	PROSECUTION	4
09-17-2007	OATH	Oath or Declaration filed	PROSECUTION	2
09-17-2007	A.PE	Preliminary Amendment	PROSECUTION	1
09-17-2007	CLM	Claims	PROSECUTION	9
09-17-2007	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	1
09-17-2007	CRFS	CRF Statement Paper and CRF are the same	PROSECUTION	4
09-17-2007	SEQLIST	Sequence Listing	PROSECUTION	54
04-16-2007	M905	Notice of DO/EO Missing Requirements Mailed	PROSECUTION	3
02-26-2007	ADS	Application Data Sheet	PROSECUTION	4
08-16-2006	TRNA	Transmittal of New Application	PROSECUTION	2
08-16-2006	SPEC	Specification	PROSECUTION	150
08-16-2006	CLM	Claims	PROSECUTION	20
08-16-2006	ABST	Abstract	PROSECUTION	2
08-16-2006	DRW	Drawings-only black and white line drawings	PROSECUTION	4
08-16-2006	WFEE	Fee Worksheet (PTO-06)	PROSECUTION	1
08-16-2006	371P	Documents submitted with 371 Applications	PROSECUTION	2
08-16-2006	ABST	Abstract	PROSECUTION	2
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08-16-2006	CLM	Claims	PROSECUTION	20
08-16-2006	DRW	Drawings-only black and white line drawings	PROSECUTION	4
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08-16-2006	P.210.IN	Incoming ISR, 237 & References from IB	PROSECUTION	3
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08-16-2006	371P	Documents submitted with 371 Applications	PROSECUTION	1

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